

Opinion No. 61-238—April 11, 1962

SUBJECT: CHIROPRACTIC ACT—Performance of venipuncture or piercing of tissue to draw blood specimen for alcohol testing is outside scope of.

Requested by: DISTRICT ATTORNEY, BUTTE COUNTY

Opinion by: STANLEY MOSK, Attorney General
Edsel W. Haws, Deputy

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ATTORNEY GENERAL'S OPINIONS

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The Honorable C. Keith Lyde, District Attorney of Butte County, has requested the opinion of this office on the following question:

May a chiropractor lawfully perform a venipuncture or pierce tissue to withdraw a blood specimen for the purpose of alcohol testing?

This question arises due to criminal prosecutions under section 23102 of the Vehicle Code (drunk driving) where blood alcohol tests are introduced into evidence on the issue of guilt.

The conclusion is as follows:

Such practice is outside the scope of the Chiropractic Act.

ANALYSIS

The practice of chiropractic is defined as: "A system, or the practice, of adjusting the joints, esp. of the spine, by hand for the curing of disease" (Webster's New International Dictionary, 2nd ed. (1951)). The decisional law of this state has followed the dictionary definition of the term (*People v. Fowler*, 32 Cal. App. 2d Supp. 737; *People v. Mangiagli*, 97 Cal. App. Supp. 935, 939; *Jacobsen v. Board of Chiropractic Examiners*, 169 Cal. App. 2d 389, 392).

The scope of the practice of chiropractic in this state is contained in section 7 of the Chiropractic Act, an initiative measure approved November 7, 1922 (Deering's Gen. Laws, Act. 4811). This section provides:

"One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated 'License to practice chiropractic,' which license shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica."

In *People v. Fowler*, 32 Cal. App. 2d Supp. 737, it was held that the provisions of section 7 of the Chiropractic Act providing that a chiropractor is not authorized to practice medicine or surgery prevented him from using drugs or severing or penetrating tissue of human beings. A similar result was reached in *People v. Mangiagli*, 97 Cal. App. Supp. 935. The court held that administering blood plasma and giving hypodermic injections were outside the scope of a chiropractic license. In 29 Ops. Cal. Atty. Gen. 187, it was held that the use of anesthetic gelatin and an electric needle in the treatment of piles by a chiropractor constituted the forbidden practice of medicine and surgery (*Newhouse v. Board of Osteopathic Examiners*, 159 Cal. App. 2d 728, 732). Thus, it is clear that the making of a venipuncture to withdraw blood by the use of a syringe and needle, involving as it does the piercing of human tissue, is outside the scope of the Chiropractic Act.

It has been suggested that in view of *King v. Board of Medical Examiners*, 65 Cal. App. 2d 644, the penetration of tissue to obtain blood for testing purposes as distinguished from such practice in the treatment of disease is per-

missible by a chiropractor. The suggestion is without merit. The penetration of tissue is a surgical procedure (*People v. Fowler, supra*, pp. 749-750) and as such is forbidden to a chiropractor by the provisions of section 7 of the Chiropractic Act.

In the *King* case the holder of a drugless practitioner's license¹ performed a hemoglobin test during the course of a lecture. This involved the taking of a drop of blood from a person's ear lobe and comparing it with a hemoglobin chart. The court held that this demonstration did not involve the penetration of tissue within the meaning of section 2394 of the Business and Professions Code, a section regulating the scope of treatment which may be administered by a drugless practitioner. Section 2394 of the Business and Professions Code provides:

"The use of drugs or what are known as medicinal preparations by the holder of a drugless practitioner's certificate in or upon any human being or the severing or penetrating of the tissues of any human being by the holder of a drugless practitioner's certificate *in the treatment of any disease*, injury, or deformity, or other physical or mental condition of the human being, except the severing of the umbilical cord, constitutes unprofessional conduct within the meaning of this chapter." (Emphasis supplied.)

The court in the *King* case held that section 2394 "merely forbids the penetration of the tissues 'in the treatment of a disease. . .'" and, therefore, concluded that the demonstration or test, not being for the treatment of a disease was not specifically prohibited by that section.

The Chiropractic Act does not contain any provision similar to section 2394 of the Business and Professions Code which pertains to drugless practitioners. The practice of medicine and surgery is forbidden not only in the treatment of disease by a chiropractor, but under section 7 of the act, such practice is forbidden without qualification. Thus, a chiropractor is not authorized to engage in medical or surgical procedures for any purpose.

It is concluded that the practice of performing a venipuncture or the piercing of tissue to withdraw blood for the purpose of alcohol testing is outside the scope of the Chiropractic Act.